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injustice has been remedied in most modern statutes. Wash. Rem. 1915 Code § 408 (1). The federal courts, adopting a stricter rule than that of the instant case, have, under similar circumstances, refused the plaintiff's motion, *Cogdill v. Whiting Mfg. Co.* (1914) 212 Fed. 658, and *a fortiori* where the defendant's motion had already been granted. *Huntt v. McNamee* (1905) 141 Fed. 293. And in interpreting a state statute similar to the one under discussion, they have adhered to the federal rule. *Whitted v. S. W. Tel. & Tel. Co.* (1914) 217 Fed. 835; *contra, Chicago, M. & St. P. Ry. v. Metalstaff* (1900) 101 Fed. 769. Most of the states, however, with similar statutes have reached the same conclusion as has the Washington court, and have granted the plaintiff's motion for voluntary non-suit, even after the defendant's motion for a directed verdict had been allowed. *Daube v. Kuppenheimer* (1916) 272 Ill. 350, 112 N. E. 61; *Van Sant v. Wentworth* (1915) 60 Ind. App. 591, 108 N. E. 975; *Malone v. Erie R. R.* (1917) 90 N. J. L. 350, 101 Atl. 415. Where the statute covers both the cases of trial by jury and trial by judge, some courts treat a case in which there has been a directed verdict as a trial by judge. See *Adams v. St. Louis S. W. Ry of Texas* (Tex. Civ. App. 1911) 137 S. W. 437.

PLEADING AND PRACTICE—INCONSISTENT CAUSES OF ACTION IN SAME COMPLAINT—CONTRACT AND TORT.—The plaintiff induced by the false representation of the defendant that he had an export license, chartered him a ship which the plaintiff in turn chartered from C. The contract stipulated as liquidated damages \$1,250 per day for every day's delay caused by the defendant. The ship was delayed two days because the defendant had no export license, causing the plaintiff to become indebted to the extent of \$1,877. The plaintiff states causes of action in deceit and in contract. *Held*, on demurrer, one judge dissenting, that the causes of action are inconsistent. *France & Can. S. S. Corp. v. Berwind-White C. M. Co.* (App. Div. 1st Dept. 1920) 180 N. Y. Supp. 709).

At common law an action in tort and in contract can not be combined in the same complaint. Stephen, Pleading (Williston ed.) 303 *nf.*; *Courteney v. Earle* (1850) 10 C. B. 73. However, section 484 of the New York Code allows causes of action that are not inconsistent to be joined in the same complaint. It is necessary to look to the common law to determine what causes are inconsistent. Thus where a contract of sale is tainted with fraud the plaintiff has an election to sue in trover, replevin or contract. The former remedies are supported by the rescission of the sale and hence are inconsistent with the action in contract which affirms the sale. See *Butler v. Hildreth* (Mass. 1842) 5 Met. 49; *Ward v. Slay* (1863) 4 Best & Sm. 335. An action begun in assumpsit under a contract of sale would forever bar an action in replevin or trover. *Butler v. Hildreth*, *supra*; or *vice versa*. *Morris v. Rexford* (1895) 18 N. Y. 552; *Kenney v. Kierman* (1872) 49 N. Y. 164. But an action in trover will not bar an action in replevin since both are founded on rescission. See *Smith v. Hodson* (1791) 4 T. R. 211; 12 Columbia Law Rev. 62. In the instant case the action in deceit and contract are not inconsistent because deceit does not depend on the rescission of the contract, *Abey v. Adams* (1915) 89 Vt. 158, 94 Atl. 506; *Bowen v. Mandeville* (1884) 95 N. Y. 237, and may therefore be joined under the Code of Civil Procedure § 484. *Taft v. Bronson* (1917) 180 App. Div. 154, 167 N. Y. Supp. 433 (refusing to follow *Edison Electric Co. v. Kalbfleisch Co.* (1907) 117 App. Div. 842, 102 N. Y. Supp. 1039). The demurrer in the instant case should have been overruled.